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10/582,165	08/30/2007	Edward L. Stahl	52045-7250	1843

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EXAMINER

ELOSHWAY, NIKI MARINA

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/582,165	Applicant(s) STAHL, EDWARD L.	
	Examiner NIKI M. ELOSHWAY	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-36 is/are pending in the application.
- 4a) Of the above claim(s) 32-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-25, 27, 30, 31, 35 and 36 is/are rejected.
- 7) ☒ Claim(s) 26, 28, 29 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 32-34 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on April 13, 2009.
2. Applicant's election with traverse of the product (claims 21-32, 35 and 36) in the reply filed on April 13, 2009 is acknowledged. The traversal is on the ground(s) that a serious burden on the Examiner does not exist because a search and examination of a single claim would likely cover all aspects of the application. This is not found persuasive because each invention of the present application requires a search area that is not required by the other inventions. Applicant acknowledges that the inventions of the present application are patentably distinct from each other (page 1 of Remarks section of the Response filed 4/13/09). Each invention of the present application requires a field of search which is not required for the other inventions. For example, the search for Group I, the product, is found in the wall structure and handle areas of class 220, (Receptacles) and in the stacking subclasses of claim 206 (Special Receptacles). The search for Group II, the method of stacking, is found in the stacking area of class 206, as well as the areas regarding arrangements of the plural receptacles in both classes 220 and 206. The search for Group III, the automated bail arm place system, is found in class 700. Group III does not require the specific structure searches of Group I or plural receptacle arrangement searches of Group II. Groups I and II do not require the data processing search of Group III. Group IV, a method for automatically moving a plurality of bail arms, requires a search in class 254 for the moving of the bail arm. This search is not required for Groups I-III.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 27 recites the limitation "the bail arm lock vertical portion" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 31 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Aiken et al. (U.S. 2003/0230510). Aiken et al. teach a container, 10 shown in figure 1a, comprising a base 12, a pair of opposing endwalls 14, 16 and a pair of opposing sidewalls 18, 20. Each of the pair of opposing endwalls including an endwall top portion shown at lead line 50 in figure 1a, and an endwall interior surface shown at wall 14 in figure 1a. The endwall support surface located on the endwall top portion. Each of the pair of opposing sidewalls including a sidewall top portion, shown at lead line 19 in figure 1a, a sidewall interior surface, shown on wall 20 in figure 1a. The sidewalls have an outer pair of notches extending downwardly from the corresponding sidewall top portion, shown in figure 4b, an inner pair of notches extending downwardly from the corresponding sidewall top portion, also shown in figure 4b, and a pair of receptacles 38, wherein each receptacle includes an opening. The pair of bail arms 22, 24, each include a pair of receptacle engaging portions at 26, 28 that are rotationally received within the corresponding

Art Unit: 3781

receptacle of each of the opposing sidewalls. The pair of crank members, shown at lead line 32, are located adjacent to the corresponding receptacle engaging portions, and an engaging portion, shown at lead line 30 in figure 3, is located between each of a respective pair of crank members. When the engaging portions of the bail arms are placed on the corresponding endwall support surfaces, as shown in figure 4a, the container is configured to stack a second identical container in a nested position, shown in figure 10a. When the bail arms are placed in the corresponding inner pairs of notches, as shown in figure 7, the container is configured to stack the second identical container in a first stacking position that is higher than the nested position, shown in figure 10c. When the bail arms are placed in the corresponding outer pairs of notches, as shown in figure 6, the container is configured to stack the second identical container in a second stacking position, shown in figure 10b, that is higher than the nested position and different than the first stacking position.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aiken et al. (U.S. 2003/0230510) in view of Overholt et al. (U.S. 7,086,555). Aiken et al. teach a container, 10 shown in

figure 1a, comprising a base 12, a pair of opposing endwalls 14, 16 and a pair of opposing sidewalls 18,

20. Each of the pair of opposing endwalls including an endwall top portion shown at lead line 50 in figure 1a, and an endwall interior surface shown at wall 14 in figure 1a. The endwall support surface located on the endwall top portion. Each of the pair of opposing sidewalls including a sidewall top portion, shown at lead line 19 in figure 1a, a sidewall interior surface, shown on wall 20 in figure 1a.

Art Unit: 3781

The sidewalls have an outer pair of notches extending downwardly from the corresponding sidewall top portion, shown in figure 4b, an inner pair of notches extending downwardly from the corresponding sidewall top portion, also shown in figure 4b, and a pair of receptacles 38, wherein each receptacle includes an opening. The pair of bail arms 22, 24, each include a pair of receptacle engaging portions at 26, 28 that are rotationally received within the corresponding receptacle of each of the opposing sidewalls. The pair of crank members, shown at lead line 32, are located adjacent to the corresponding receptacle engaging portions, and an engaging portion, shown at lead line 30 in figure 3, is located between each of a respective pair of crank members. When the engaging portions of the bail arms are placed on the corresponding endwall support surfaces, as shown in figure 4a, the container is configured to stack a second identical container in a nested position, shown in figure 10a. When the bail arms are placed in the corresponding inner pairs of notches, as shown in figure 7, the container is configured to stack the second identical container in a first stacking position that is higher than the nested position, shown in figure 10c. When the bail arms are placed in the corresponding outer pairs of notches, as shown in figure 6, the container is configured to stack the second identical container in a second stacking position, shown in figure 10b, that is higher than the nested position and different than the first stacking position.

Aiken et al. disclose the claimed invention except for the paper sticker removal structures of the sidewalls and endwalls. Overholt et al. teach that it is known to provide a container with raised and depressed areas on the interior and exterior of the endwalls and sidewalls (see figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Aiken et al. with the sidewalls and endwalls having raised and depressed areas on the interior and exterior surfaces, as taught by Overholt et al., in order to increase the strength of the walls.

9. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aiken et al. (U.S. 2003/0230510) in view of Overholt et al. (U.S. 7,086,555), as applied to claim 21 above, and further in

Art Unit: 3781

view of Jannard (U.S. 4,308,762). The modified container of Aiken et al. disclose the claimed invention except for the protrusions of the handle. Jannard teaches that it is known to provide a handle with raised bumps (see element 15). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Aiken et al. with the handles having bumps, as taught by Jannard, in order to improve the traction between the hand and the handles, as stated in Jannard.

10. Claims 25 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aiken et al. (U.S. 2003/0230510) in view of Hassell et al. (U.S. 2005/0263424). Aiken et al. disclose the claimed invention (see explanation in paragraph 5 above) except for the bail arm lock structure. Hassell et al. teach that it is known to provide a container with a bail arm lock structure (see figure 9 and lead line 38). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Aiken et al. with the bail arm lock structure of Hassell et al., in order to prevent the handle from becoming horizontally displaced.

11. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aiken et al. (U.S. 2003/0230510) in view of McGrath (U.S. 5,896,992). Aiken et al. disclose the claimed invention (see explanation in paragraph 5 above) except for the finger recesses. McGrath teaches that it is known to provide a container with finger recesses (see figure 11). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Aiken et al. with finger recesses of McGrath, in order to allow the user to grasp the container more comfortably.

Allowable Subject Matter

12. Claims 26, 28 and 29 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3781

13. Claim 27 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art is cited for the bail handle positions.

15. THIS ACTION IS NON-FINAL.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIKI M. ELOSHWAY whose telephone number is (571)272-4538. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Niki M. Eloshway/
Niki M. Eloshway
Examiner
Art Unit 3781

Application/Control Number: 10/582,165

Page 8

Art Unit: 3781